IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2674 of 2003

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

BHAGVATSINGH OGHUBHA ZALA

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 2674 of 2003

MR HR PRAJAPATI for Petitioner No. 1

MS NANDINI JOSHI, AGP for Respondent No. 1-3

MS PJ DAVAWALA for Respondent No. 4

CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 09/05/2003

ORAL JUDGEMENT

1. By this petition under Article 226 of the

Constitution of India, the petitioner-detenu has challenged the legality and validity of the order of detention dated 4.2.2003 passed against the detenu by the District Magistrate, Surendranagar, in exercise of the powers conferred on him by Section 3(2) of The Prevention of Black-Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 (hereinafter referred to as the "PBM Act").

2. The ld. counsel appearing for the detenu Mr. Prajapati has taken me through relevant facts and papers supplied to the detenu along with grounds of detention. While recording subjective satisfaction, the District Magistrate has mainly considered the facts placed before him whereby it is alleged that the detenu is responsible for siphoning and selling out blue kerosene which is otherwise to be distributed through Fair Price Shop and that too to the card-holders only.

3. The petitioner has challenged the legality and validity of the order of detention passed against him on number of grounds. However, ld. counsel Mr. Prajapati appearing for the petitioner-detenu, has concentrated and restricted his arguments mainly on one ground keeping his right reserved to agitate other grounds if required, that the order of detention needs to be quashed and set aside and detenu should be set at liberty forthwith as the detenu has not been supplied with legible copies which has affected his right to make effective representation flowing from Article 22(5) of the Constitution of India. While developing his arguments, ld. counsel Mr. Prajapati has further stated that this Court as well as Apex Court in more than one decisions have quashed and set aside the order of detention and continued detention solely on the ground of non-supply of legible copies. I have perused the documents supplied to the detenu. I am satisfied that the documents at page nos. 40 and 50 are materially illegible. These two documents are the zerox copies of the ration card issued to the consumer cardholders and in both these documents, neither the card number nor ward number are legible. In one of the documents, even name of the cardholder is not legible. Many other copies are practically faint which can be read with great effort and help of magnifying glass. Such copies also cannot be equated with legible copies.

4. Considering the accepted proposition of law in this regard and in view of the fact that detenu has not been supplied legible copies of the documents which has seriously prejudiced his right to make effective representation flowing from Article 22(5) of the

Constitution of India, I am inclined to allow this petition holding that the detention of the present detenu shall have to be turned down on the sole ground of non-supply of legible copies.

5. For the reasons aforesaid, this petition is hereby allowed. Impugned order of detention dated 4.2.2003 passed by the District Magistrate, Surendranagar against the detenu is hereby quashed and set aside and detenu is hereby ordered to be set at liberty forthwith if they are not required to be detained in any other case. Rule is made absolute. Direct service is permitted.

9.5.2002 [C.K. BUCH, J]
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